IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION 375 OF 2003

The State of Maharashtra & Anr. .... Applicants
Vs.
M/s. Rama Automobiles Agency
Pvt. Ltd. & another .... Respondents

Shri S.N. Gawade, Asst. Government Pleader,
for the Applicants.

Ms Chandana Salgaonkar for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 02, 2004

P.C:

1. Heard the learned Advocates for the parties.

2. The applicants challenge the order passed by the trial Court holding that the Civil Court has jurisdiction to entertain the suit. Objection was sought to be raised by the applicants to the maintainability of the suit referring to Sections 54 and 73 of the Bombay Sales Tax Act, 1959, hereinafter referred to as "the said Act". The contention of the respondent/plaintiff is that the applicants/defendants are seeking to recover the alleged arrears in relation to the sales tax dues from the partnership firm by name M/s. Rama Automobiles from the plaintiff-company when in fact the plaintiff-company is a totally different

entity from that of the said firm. On the other hand, it is the case of the applicants that the rights and liabilities of the said partnership firm having been taken over by the plaintiff-company and, therefore, the applicants are entitled to recover the sales tax dues of the said firm from the plaintiff-company. In the background of these facts, the applicants sought to raise a preliminary objection under Section 9-A of the Code of Civil Procedure about the absence of jurisdiction to the Civil Court to entertain the suit. Even though all the issues regarding the liability under the said Act are to be decided by the authorities under the said Act, fact remains that the plaintiff has approached the Civil Court with the contention that the authorities are trying to recover the sales tax dues in relation to a totally different entity from the plaintiff-company. If it is the case of the applicants that the liabilities of the partnership firm have been taken over by the plaintiff-company, certainly the applicants would be entitled to lead necessary evidence in that regard and based on that to raise the issue regarding the absence of jurisdiction to the Civil Court to grant the relief asked for in the suit. However, in the absence of any such evidence or material in support of the contention raised, it is too premature for the Civil Court to decide about the jurisdiction or lack of jurisdiction to the Civil Court to deal with the matter

and in the circumstances, therefore, no fault can be found with the impugned order passed by the trial Court at this stage. While leaving open the said issue and granting liberty to the applicants to raise the necessary issue of lack of jurisdiction in the written statement, if they so desire to raise the preliminary issue in that regard and if so raised, the Court will have to decide the same based on the evidence to be produced by the parties, no interference is called for in the impugned order at this stage. Hence the petition with the above observations is rejected.